

Examiner is respectfully requested to telephone applicant's undersigned representative to schedule this interview immediately upon receipt of this amendment.

Introductory Remarks:

The Office continues to rely on a single principal prior art reference in rejecting the claims, the Brandt et al patent. Throughout the prosecution of this application, applicant has respectfully urged the same interpretation of Brandt, i.e. that it discloses and teaches to one of ordinary skill in the art at best a system which provides internet access for an internet user to a "legacy" software resident on a single computer system, and not a system that provides for the management and reporting of the business conducted over such software including especially with a different software program on a different computer. On the other hand, while the Office has continued to reject the claims over Brandt, it has shifted its reliance on different occasions to and from different passages in Brandt. In order to clarify the teaching of Brandt, applicant is presenting for entry into the file a declaration from an expert who not only provides a correct technical interpretation of Brandt but also offers opinion as to what it would teach to one of ordinary skill in the art. It is hoped that this evidence will put to rest the differences in interpretation of Brandt and pave the way for the allowance of the claims.

As the Office will no doubt agree, the Office must consider evidence of commercial success when determining the patentability of the claimed invention. Evidence is being presented with this submission of not ordinary commercial success, or even outstanding commercial success, but incredible commercial success. The claimed invention presently is the system through which literally over a billion dollars of car rentals are handled every year, and without which such business would be virtually impossible to handle. And, it is the claimed features of the invention which enable this commercial success. There are few inventions in the entire patent world which can claim this same commercial success. This overwhelming evidence is being entered into the file and commands the allowability of the claims.

It is respectfully submitted that there is a difference of opinion between the Office and applicants not only as to how the prior art must be established for support of its rejections, but further the law on obviousness which prohibits through hindsight reconstruction the search for disclosures and teachings that are not present in Brandt as well as grafting on selected parts of another prior art reference in seeking to assemble the claimed invention therefrom. As an aid to the Office, a synopsis of the controlling law is presented which forcefully dictates that the Office

must cite authority for its assertions as to what is known in the car rental industry or else withdraw such rejections. The same goes for suggestions of motivation to combine these so called “well known” capabilities with the incorrect teachings of the Brandt reference. The Office must point to some objective teaching for this combination to be made and cannot rely on the hindsight truth that the claimed invention provides these features and advantages so there must have been motivation to combine them. In sum, the Office must withdraw from its tack of assuming prior art, and then assuming that there was motivation to combine this assumed prior art with Brandt because if the combination is made performance is improved or features not previously provided are now enabled, compounded with mis-interpreting the single primary reference, Brandt. This is in direct contravention with controlling law.

Argument:

The Brandt patent

One of the principal differences between applicants and the Office rests on the proper interpretation of Brandt. The Office continues to interpret Brandt as disclosing a system that enables a user to access multiple software programs, and multiple rental car agencies web sites through the FlowMark software. That is clearly not what Brandt teaches and discloses, as supported by the Declaration of Mr Dittmar attached hereto. As Mr. Dittmar explains, Brandt teaches a system that allows a user of a web browser to access a single software program over the internet. Indeed, the Brandt system allows multiple users to access the same single software system at the same time over the internet.

Mr Dittmar also explains that Brandt discloses the use of a FlowMark software as a preferred embodiment for implementing a rental car application. In other words, Brandt makes clear that the FlowMark application corresponds to the car agency’s software, or legacy software, which itself corresponds to only one computer program identified in the present patent application. The FlowMark application software does not have the management capabilities of the present invention. This failure in disclosure is acknowledged by the Office, and is not to be found in any other prior art reference presently cited and relied on by the Office.

Mr. Dittmar also points out that the FlowMark application may not be used to access other or different car rental agency software over the internet, as suggested by the Office. This is not what Brandt teaches, and the architecture of Brandt funnels users into a common gateway for

each independent service provider, thereby requires users to surf the internet to go to a different service provider.

Mr. Dittmar's analysis and opinion is corroborated by another published patent application owned by IBM, the maker of the FlowMark software. In that published patent application IBM itself denigrates its FlowMark software, remarking that it is ill suited for e-commerce or internet transactions among different companies. This teaches against the further modification admittedly needed to add in the lacking management capability and additional software program provided by the present invention. The very focus of the claimed invention is to provide a system and method to enable substantial business between multiple companies over the internet.

In conclusion, applicant has now submitted corroborated expert testimony that Brandt does not teach access to more than one service provider without entering another URL and requiring the user to surf the internet, does not teach software providing management capability (which is apparently admitted by the Office), does not teach user access to more than a single legacy software program and that program is ill-suited to e-commerce, and instead teaches how to move a legacy software program "on-line" for single users. The Office is respectfully requested to either adopt this correct interpretation of Brandt or offer countervailing evidence.

#### The Invention's Commercial Success is Incredible

Submitted herewith is the Declaration of David Smith, one of the co-inventors of the present invention, and in his Declaration Mr. Smith chronicles the fact that the present invention has won an award from CIO based on its many functional features and advantages over the prior art, including those which features which are the subject of the present claims. As Mr. Smith notes, the present invention processes more than \$1.5 Billion of rental transactions annually, and provides the link over which all 25 of the largest insurance companies transact rental car business with applicant. And, the present invention has experienced significant growth over even the year from the time of the award to present. Significantly, it is the claimed features of the invention that have led to this incredible commercial success. As noted by Mr. Smith, in general, it is the management capability of the present invention that is so attractive to its user/customers. This includes authorizing, processing and billing of transactions, modifying transactions, generating reports for management use, all of it being accessible over the internet. This incredible commercial success is affirmative evidence of non-obviousness, and must be

considered by the Office as rebutting and overcoming the obviousness rejections of record based on the Brandt reference.

The Law on Obviousness Refutes the Rejections of Record

It is respectfully submitted that the Office has engaged in hindsight re-construction in formulating the rejections of the claims of record. In order to lay the foundation for overcoming those rejections, applicant wishes to lay before the Office the applicable law on the subject, and cite several cases for the Office's consideration which provide examples where the Federal Circuit has commanded that hindsight re-construction must be guarded against. Accordingly, the Office is respectfully requested to consider the following law as it applies to the present application.

A claimed invention is un-patentable if the difference between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. 35 U.S.C. §103(a). The ultimate determination of whether an invention is or is not obvious is a legal conclusion based on factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between claimed invention and the prior art; and (4) objective evidence of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). Thus, the step in determining whether an invention is obvious in accordance with the requirements of section 103 involves "casting the mind back to time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field." *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999) *rev'd on other grounds*, *In re Gartside*, 203 F.3d 1305, 53 U.S.P.Q.2d 1769 (Fed. Cir. 2000). The best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of the teaching or motivation to combine the prior art references. *Id.* (quoting *C.R. Bard, Inc. v. M 3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998)).

In *Dembiczak*, the Federal Circuit criticized the Board for making mere denials and conclusory statements to support its obviousness rejection. *Id.* at 1000. The *Dembiczak* invention related to a trash bag which simulated the general outer appearance of a decorative pumpkin when filled. *Id.* at 996. The obviousness rejections resulted from a combination of primary prior art references related to conventional trash or yard bags and secondary prior art

references in the form of publications teaching use of decorated paper bags. *Id.* at 997. The Board justified the combination simply stating that “the [prior art] references would have suggested the application of facial indicia to the prior art trash bags.” *Id.* at 1000.

The Federal Circuit criticized the Board’s rejection stating that “rather than pointing to the specific information in [the prior art references] that suggest the combination with conventional bags, the Board instead described in detail the similarities between the [prior art] references and the claimed invention, noting that one reference or the other in combination with each other described all of the limitations of the pending claims.” *Id.* The Federal Circuit further criticized the Board’s obviousness analysis stating that its was merely a discussion of the ways that the multiple prior art references could be combined to read on the claimed invention. *Id.* (“Yet this reference-by-reference, limitation-by-limitation analysis fails to demonstrate how the [prior art references] teach or suggest their combination with the conventional trash or lawn bags to yield the claimed invention”). The Federal Circuit found that the Board failed to make specific or even inferential findings concerning the identification of the relevant art, the level of ordinary skill in the art, the nature of the problem to be solved, or any other factual findings that might serve to support a proper obviousness analysis. *Id.*

Although the Federal Circuit noted that evidence of a suggestion, teaching or motivation to combine references may flow from the prior art references themselves, **the knowledge of one of ordinary skill in the art, or in some cases the nature of the problem to be solved, the range of sources available does not diminish the requirement for actual evidence** (emphasis added). *Id.* That is, the showing of a suggestion, teaching or motivation to combine references must be clear and particular. *Id.* The Federal Circuit reversed the obviousness rejection stating that the Board failed to particularly identify any suggestion, teaching or motivation to combine the [prior art references]. *Id.* at 1001.

A similar set of circumstances was present in the case of *In re Laskowski*, 871 F.2d 115, 10 U.S.P.Q.2d 1397 (Fed. Circ. 1989), where the Board found the claims obvious allegedly because a primary reference could readily be modified to form the claimed invention. *Id.* at 117. The *Laskowski* invention related to a band saw having a pulley-type wheel with loosely-fitting tire on which the band saw blade rested. *Id.* at 116. In *Laskowski*, the Federal Circuit again criticized the Board’s obviousness analysis stating, “**The mere fact that the prior art could be modified to yield the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification** (emphasis added).” *Id.* at

117. The Federal Circuit conceded that the suggestion to modify a structure shown in a prior art reference need not be found in that particular prior art reference, but **the Federal Circuit cautioned that in this case, the only source of the suggestion to modify the prior art reference came from the applicant's disclosure and there was no other evidence of other prior art teachings that would provide the motivation of using the claimed invention in the manner alleged.** *Id.* at 117.

In *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q. 1780 (Fed. Circ. 1992), the Federal Circuit reiterated the longstanding principle, **"It is impermissible to use the claimed the invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious (emphasis added)."** *Id.* at 1266. In *Fritch*, the invention related to a landscape edging device used to separate landscape fill material from the mowable lawn. *Id.* at 1262. The critical limitations in the claim were that the edging material in its entirety was flexible and conformable to a ground surface of varying slope. *Id.* The prior art references used in rendering the obviousness rejection included a primary reference related to a grass edging and watering device and a secondary reference which purportedly taught the use of a flexible retainer strip used in landscaping edging. *Id.* at 1265. **The Federal Circuit in reversing the Board's decision found that there was no objective teaching to combine the references in the manner maintained by the Board.** *Id.* at 1266. Among other reasons for finding a lack of suggestion, teaching or motivation to combine the prior art references, the Federal Circuit found that the primary reference lacked any suggestion to use its water conduit as a landscape edging or landscape fill retainer because this would ultimately result in clogging of the water conduit. *Id.* at 1265 (finding a proposed modification would be inappropriate for an obviousness inquiry where the modification rendered the prior art reference inoperable for its intended purpose). The Federal Circuit found it improper to draw the inference that the primary reference suggested making the entire device "flexible" when in fact only the mower strip was described as having this function. *Id.* at 1265-6. **The Court also criticized the Board's finding that the claimed invention was an obvious modification of the devices shown in the references stating that the analysis was not supported by any evidence drawn from the references.** *Id.* at 1266. Accordingly, the Federal Circuit found that the Board impermissibly used hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *Id.* at 1266.

With respect to obviousness rejection based on a single prior reference of which there are several such rejections in the present application, the Federal Circuit has reiterated the requirement that there must be a showing of a suggestion or a motivation to modify the teachings of that reference. *In re Kotzab*, 217 F.3d 1365, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). In *Kotzab*, the invention related to a method of injection molding plastic articles where the operation of a turbine on an injection mold machine was regulated to control the cooling and heating of the injection mold. In upholding the examiner's obviousness rejection, the Board found that several prior art references taken together showed that it was known in the art to utilize empirical data to design the mold and the arrangement of cooling channels in the mold. *Id.* at 1368-9. The Federal Circuit reversed the Board's holding finding that the broad conclusory statements set forth by the Board were not evidence sufficient to uphold the obviousness rejection. *Id.* at 1371-2. **The Federal Circuit criticized the Board's analysis stating that when making an obviousness rejection, whether it is based upon an express or implicit showing of a teaching or motivation, the Board must provide particular findings related thereto.** *Id.* at 1370. Although the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references, the test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. *Id.* The Board argued that the prior art reference taught using a single sensor to control a number of valves in the cooling system. *Id.* at 1370. Based upon this, the Board concluded that the reference taught using a single "system" as recited in the claim to control more than one valve. The Federal Circuit criticized the Board stating that the conclusion that "one sensor" was the same as "one system" could not be drawn by a reasonable mind reviewing the disclosure. *Id.* **The Federal Circuit further criticized the Board stating that while the test for establishing an implicit teaching, motivation or suggestion is what the prior art reference would have suggested to those of ordinary skill in the art, the purported teaching, motivation or suggestion must be considered in the context of the entire reference.** *Id.* at 1371. Thus, an obviousness rejection cannot be predicated on the mere identification in the prior art reference of individual components of the claimed limitations, but rather, particular findings must be made as to the reason why the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *Id.*

The case of *In re Shaffer*, 229 F.2d 476, 108 U.S.P.Q. 326 (C.C.P.A. 1956), also illustrates this principle. The *Shaffer* invention related to a apparatus for continuously titrating a moving stream of fluid. The invention required an electronic amplifier as part of a reactive circuit to minimize amplification of rapid fluctuations of signal voltage which would not be representative of end point values. The prior art reference taught use of an amplifier and a titrating apparatus of a general nature disclosed by the inventor. The court found that there was no disclosure or suggestion in the prior art reference of the problem identified by the applicant for which the invention was created to solve. Although the electrical circuit in the prior art reference was capable of minimizing the effect of undesirable fluctuating signals, the Court found that there was no specific teaching in the prior art reference that the circuit could be used with the titrating apparatus of the invention. *Id.* at 480. Thus, the Court reversed the Board's decision on obviousness finding that a person having the reference before him who was not cognizant of the inventor's disclosure would not be informed that the problem solved by the inventor ever existed. *Id.* In other words, **the Court found that a reference which never recognized the inventor's problem is not capable of suggesting its solution and therefore cannot render the claimed invention obvious.** *Id.*

The case of *In re Lee*, 277 F.3d 1338, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002), is also illustrative on this issue. The *Lee* invention related to a method of automatically displaying the functions of a video display device and demonstrating how to select and adjust the functions in order to facilitate response by the user. *Id.* at 1341. The examiner rejected the claims based upon two prior art references: a primary reference which described a television set as having a menu display by which the user can adjust various picture and audio functions; and a secondary reference relating to a video game display having a demonstration mode showing how to play the game. *Id.* at 1340-1. The examiner rejected the claims as being obvious stating that it would have been obvious to one having ordinary skill in the art to combine these features to produce the *Lee* system. *Id.* at 1341. The Board upheld the examiner's obviousness rejection stating that the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill without any specific hint or suggestion in a particular reference. *Id.* The Board in rendering its opinion did not explain the "common knowledge and common sense" on which it relied for its conclusion that the combined teachings of prior art references would have suggested the claimed invention to those of ordinary skill in the art. However, in responding to a request for reconsideration, the Board pointed to the Examiner's Answer which merely said both



references taught program features, that one of the features was “user-friendly”, and that it would have been obvious to combine them. *Id.* During the prosecution, applicant Lee had pressed the examiner for some teaching, suggestion, or motivation in the prior art to select and combine the references. However, the best the Examiner could come up with as stated above: that the references taught programmable features which could be used in many different devices and that the one demonstration feature is user friendly and could function as a tutorial feature. As the Federal Circuit said: “However, perhaps recognizing that the examiner had provided insufficient justification to support combining the . . . references, the Board held, as stated *supra*, that a ‘specific hint or suggestion’ of motivation to combine was not required.”

The Federal Circuit reversed the Board’s decision stating that the factual inquiry whether to combine references must be “thorough and searching.” *Id.* at 1343 (“**When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation or suggestion to select and combine the references relied on as evidence of obviousness**”). The Federal Circuit reiterated the requirement for specificity, stating that even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. *Id.* The Court criticized the examiner’s conclusory statement, “The demonstration mode is just a programmable feature which can be used in many different devices while providing automatic introduction by adding the proper programming software” and that “another motivation would be that automatic demonstration mode is user friendly and it functions as a tutorial.” *Id.* The Court specifically found that statements of this nature were insufficient to adequately address the issue or the motivation to combine. *Id.* The motivation to combine references is a factual question which cannot “be resolved on subjective belief and unknown authority.” *Id.* at 1344. The Court further stated that common knowledge does not in and of itself make it so absent evidence of such knowledge. *Id.* at 1345.

As the Federal Circuit Court emphasized, **these principles are long standing and well grounded in its precedent:**

“‘The factual inquiry whether to combine references must be thorough and searching.’ *Id.* It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. *See, e.g. Brown & Williamson Tobacco Corp. v. Phillip Morris Inc.*, 229

F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) ('a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding') (quoting *C. R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999 50 USPQ2d 1614, 1617 (Fed. Cir. 1999)) ('Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.') *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998) (there must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the applicant); *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (" 'teachings of references can be combined *only* if there is some suggestion or incentive to do so.' ") (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984))."

The Office is respectfully requested to consider this long established law in re-considering its rejections. In particular, several of the Office comments are indicative of assuming prior art as well as any motivation of combining or altering the Brandt reference to arrive at the claimed invention. For example, one such comment is "It is well known in the car rental industry that rental agencies after reservation are confirmed on-line, have the capability to control billing and administrative functions including invoice and payment surrounding a vehicle rental transaction." This and other such similar comments are traversed, and applicant will now make particular comments directed to the various pending claims.

#### Comments as to Particular Claim Rejections

Applicant will now address the claim rejections in the order given in the last communication from the Office dated October 29, 2002, paper no. 14.

Reconsideration is respectfully requested of the rejection of claims 1-40, 45-46, 48, and 50 as being obvious over the Brandt et al patent, of record. The independent claims included in this rejection are 1, 24, 35, and 45. All of the dependent claims included in this rejection depend ultimately from these independent claims except claims 48 and 50 which depend from claim 47,

which is subject to an anticipation rejection over Brandt. For convenience, applicant will address comments to the rejection of claim 47 within this section as well.

Brandt has been discussed through several amendments, and is now the subject of an explanation given in Mr. Dittmar's Declaration. As Mr. Dittmar presents evidence and expert opinion that has not been refuted, his interpretation should be irrefutable absent countervailing evidence presented by the Office, at present absent from this file. Although any such countervailing evidence is earnestly solicited, it is not believed that any such evidence is available as it is respectfully submitted that the clear teaching of Brandt is not controversial and would be agreed on by any others of similar background. Accordingly, the following comments will be based on Mr. Dittmar's interpretation of Brandt.

Taking the independent claims one at a time, claim 1 recites, inter alia, a computer system with a "rental vehicle software program being configured to . . . communicate a rental vehicle reservation to one of a plurality of providers of said rental vehicle services, at least one of said rental vehicle service providers offering a plurality of specific geographically remote rental vehicle locations at which vehicles for rent are situated." As used in the specification of the present application, the term "provider of rental vehicle services" is intended to mean a company that provides such services and not just one of many locations that a specific company may have. In the rental car example, this is interpreted as providing a system that allows a user to make a reservation not only with Enterprise Rent-A-Car Company but also with Hertz, Avis, etc., all through the same rental vehicle software program. The Brandt et al system has no such capability and instead speaks only in terms of a single specific rental car agency associated with its own software program. This is the equivalent to the FlowMark program 342 in computer system 340 as shown in fig. 4. Furthermore, the Brandt et al system teaches that its solution to such a problem would be to instead connect the user directly to the other service provider's web site and its own software program. This would be a second computer system and software corresponding to the computer systems 330, 340 and their associated software again as shown in fig. 4. While that would be a solution, and would enable a user to make his reservation with Hertz, say, instead of Enterprise Rent-A-Car, this would create an accounting nightmare in a business-to-business, high volume relationship in that all these multiple rental vehicle transactions would be handled by separate "legacy" systems at each provider and there would be no common collection point for the data corresponding to all the rental transactions. The absence of this common collection point for data would result in an inability of the user to keep

track of, modify, communicate effectively about, pay for and otherwise be aware of the overall activity in placing reservations at multiple service providers.

Nor would it be obvious to modify the Brandt et al system in the manner taught by the present invention as Brandt et al already teach a different solution that requires the user to surf the internet over to another agency's web site, and not using the same software of the claimed invention. Furthermore, the Office has failed to identify any independent teaching or suggestion of a motivation for modifying Brandt in the manner required to arrive at the claimed invention.

It is also noted that the Office has acknowledged that the Brandt et al system "fails to teach . . . authorizing, processing and billing . . ." as claimed in claim 1. For the reasons as explained above, it would not have been obvious for one of ordinary skill in the art to add these features. More importantly, the Office must show the objective evidence in the prior art that suggests the motivation for adding these features. In actuality, the objective evidence in the prior art teaches away from the modifications. First of all, in the domain in which Brandt et al operates, i.e. that of the consumer making a single reservation for himself, there is no need for these functions. Instead, as evidenced by what has happened in the real world since Brandt et al was filed, rental car web sites routinely ask for credit card information as a substitute for these processes. In other words, as long as the consumer's credit card company will agree to pay for the rental, the rental car company is prepared to accept the reservation. Thus, these issues don't come up in the "obvious" extension of Brandt et al to accommodate payment. However, with the present invention, where third party adjusters need to be making multiple transactions in a high volume business-to-business relationship, as explained in the specification of the present application, another layer of software is provided to keep track of and provide the authorizing, processing, and billing functions.

It is noted that the Office suggests that merely modifying the user data entry form to ask for additional information would somehow provide the extra functionality of "authorizing, processing and billing" as required by claim 1. The FlowMark software included in Brandt does not provide that functionality. So even presuming that additional information would be provided by a user sufficient to permit these three claimed functions, the Office has failed to identify any prior art reference that provides this functionality and the rejection must fail for that reason as well.

In sum, Brandt et al fails to even address the problems of "managing" these reservations and hence fails to provide any evidence of motivation to make the suggested modification

needed to arrive at applicant's invention. The Office is respectfully requested to withdraw this rejection.

As to claim 24, it recites an automatic rental vehicle transaction system including a "rental vehicle software program being configured to automatically respond to a series of commands from said authorized purchaser and communicate a rental vehicle reservation to any one of a plurality of vehicle rental service providers . . . having sufficient information for authorizing, processing and billing said rental vehicle transaction." As explained above, Brandt et al do not disclose a system or software having the capability to permit direct user connection to a plurality of service providers and instead merely disclose an internet portal for user direct access to a single car agency's "legacy" software for fulfillment of a car rental reservation with that service provider. Brandt et al actually teach that connection to any one of a plurality of vehicle rental service providers can be facilitated by merely connecting separately to another web address, with that web address having its own "legacy" software program. In other words, Brandt et al do not disclose or suggest a single "rental vehicle software program" as claimed having the capability to connect to different "legacy" car rental software programs.

Furthermore, no management capabilities are provided by this "legacy" software. As noted above for claim 1, and as admitted by the Office, Brandt et al fail to teach this management capability. Indeed, Brandt et al teach away from this by instead being directed to a user's individual use with credit card charging, thereby eliminating the need for this kind of management capability. Furthermore, the Office has failed to cite a prior art reference providing this functionality, or the motivation to add or combine this functionality into the Brandt system. This rejection fails to satisfy the law on obviousness rejections, is rebutted by the two Declarations of record, and must therefore be withdrawn.

Claim 35 recites "a computer software program . . . providing administrative control and accounting for, services offered and physically available at a plurality of geographically diverse locations." As explained above, Brandt et al disclose a system that enables a user to have an internet connection to "legacy" systems, one at a time, and neither recognizes the need for nor provides a solution for the needed administrative control and accounting needed to accommodate high volume business-to-business operations. Instead, Brandt et al teach that a user may be separately connected to another service provider's "legacy" software/hardware, over the internet, using his web browser and requiring him to surf to another internet web site. This is a different methodology than that provided by the claimed invention, and it will not provide the claimed

administrative and accounting control. By offering a different solution, one which does not provide the claimed functionality, Brandt et al actually teach away from the present invention. As noted above, it is the Office's job to submit a prima facie ground for its obviousness rejection by pointing out some objective evidence in the prior art that suggests the motivation for combining the teaching of prior art references, or the modification of prior art references, in the manner needed to reject the claims. Mere vague references to what is "well known" in the rental car industry is legally deficient to support any rejection. These comments are traversed and the Office is requested to either cite prior art that provides this functionality and the motivation for combining it with Brandt or withdraw this rejection.

Claim 45 recites "an internet enabled automatic rental vehicle transaction system, said system having an internet web site through which an authorized purchaser of rental vehicle services may access a plurality of rental vehicle providers including at least one provider having a rental vehicle software program resident on a computer system." Brandt et al fail to teach a system having a single web site through which a plurality of rental vehicle providers may be accessed. Instead, as explained above, Brandt et al provide user access to a number of separate web sites, with each web site being associated with a separate rental vehicle provider, thereby requiring a user to sign onto a separate web site to make a rental reservation with a different service provider. By way of contradistinction, the present invention allows a user to sign onto a single web site and yet make a rental vehicle reservation with any one of a plurality of service providers. This provides a unique advantage in that a user need not sign off and then "surf" over to another web site to make the second reservation. Furthermore, all the accounting and administrative tasks may be performed on both reservations, and data provided for both to a user, by using the present invention. This claimed feature renders the present invention uniquely suited to a business-to-business relationship as is disclosed and claimed in the present application. By not providing this capability, and as it is not taught that administrative and accounting functions would be desired, it would not be obvious to one of ordinary skill in the art to modify Brandt et al. Nor would it be obvious even should one of ordinary skill in the art be charged with that task as to do so would require the creation of a whole layer of software/hardware not contemplated by Brandt et al. Brandt et al contemplates "once and done" reservations that are made by consumers who typically make a single reservation that doesn't need managing as it would be overkill and unnecessary.

As noted in the law portion of this amendment, the Office has the burden of citing specific objective teachings in the prior art that provide the motivation for combining or modifying Brandt to arrive at the claimed invention. The Office has failed to do this. Mere conclusory statements that “it would have been obvious to a person having ordinary skill in the art to include accurate user information necessary to authorize, process and bill the user for the rental vehicle transaction . . . as taught by Brandt et al with motivation of facilitating the rental agency with collecting dependable and reliable information thereby assisting the process of billing the customers.” are legally deficient to support an obviousness rejection as they fail to particularize the basis for the rejection. In other words, what is it in Brandt that provides this motivation? What is it in any prior art that performs these claimed functions of authorizing, processing and billing that the Office is combining with Brandt? What prior art reference is being relied on as teaching these management functions? The Office rejection is legally deficient and should be withdrawn.

Claim 47 recites limitations of an internet site through a computer where said computer is networked with a plurality of computers “configured to allow users to place reservations for rental vehicle services with any one of said providers”. As explained above, Brandt et al do not provide a single computer with an internet gateway through which multiple service providers are accessible. As such, the many advantages offered with this connection arrangement are not available. Nor would it be obvious to abandon the connection scheme taught by Brandt et al in absence of any teaching that to do so would provide any functional advantage. Not only has the Office failed to cite any such teaching as it must do to support an obviousness rejection, there is none as to do so would be to radically alter the configuration of Brandt et al’s system. Furthermore, the present inventors have found it necessary to layer on a new software program to achieve this functionality, as claimed, and Brandt et al is fully self contained and indeed fully being utilized in today’s world in the consumer environment. The Office comment that the FlowMark software can be used to enter a reservation with another car rental agency is just wrong. The FlowMark application as configured in Brandt may only be used to enter a reservation with its associated car rental agency, and instead teaches that a user must surf over to another web site to enter a reservation with a different car agency. The Office comments are traversed. For these reasons claim 47, and the dependent claims 48 and 50, are fully allowable.

Reconsideration is respectfully requested of the rejection of claims 51-57, and 62-64 as being obvious over Brandt. This rejection includes independent claims 51 and 62. Claim 51

recites a computer software program having means for providing access to a plurality of service providers with one such service provider having its own integrated business software, with the first software program having means for managing the service reservations including administrative control and accounting therefor. As explained profusely above, Brandt fails to teach any software for managing reservations. Furthermore, the Office has failed to provide any citation to any teaching in the prior art to modify Brandt to provide such management functionality. Nor has the Office cited a prior art reference that itself provides this management functionality. Even more so, the claim requires two pieces of software resident on two different computers. The Office has failed to explain how Brandt teaches or discloses such a configuration. This rejection is explained with the comment that it would be obvious to one of ordinary skill in the art, and that the motivation would be facilitating the rental agency with collecting dependable and reliable information thereby assisting the process of billing the customers. But, that motivation is not to be found in Brandt as it fails to disclose any need for that information or assistance. The Office comment is traversed and the Office is requested to cite to a specific objective teaching in the prior art for this modification or withdraw the rejection, in accordance with the correct law on obviousness.

As to claim 62, once again the Office admits shortcomings in the teaching of Brandt, and its failure to disclose several steps in the claimed method including accepting and communicating reservations to a service provider's integrated business software from the management software. However, the Office again misses the mark by suggesting that since the FlowMark software stores data, it would be obvious to not only accept a reservation into the FlowMark software but also information relating to its invoice and payment. However, this comment indicates a failure to understand the claimed invention. The steps required include communication between two software programs. Even presuming the Office can relay on the FlowMark software for one of such programs, the Office has failed to answer the question of where the second software is and how you can communicate with yourself, in effect. Again, the Office is requested to follow the law on obviousness and cite the specific teaching in the prior art which provides this motivation to modify the Brandt reference in the manner suggested. Otherwise the rejection should be withdrawn.

Reconsideration of claims 58-61 as being obvious over Brandt in view of the Centent reference is respectfully requested. Claim 58 recites a software program having means for providing an internet site for access by a multi-level business user to a plurality of service



providers with at least one of said service providers having an integrated business software, and the software program having means for managing the reservations. Again, in its comments, the Office admits the shortcomings of the Brandt reference but then suggests that one of ordinary skill in the art would find it obvious to provide these shortcomings. Simply put, the Brandt reference does not teach the use of two software programs to achieve any management over reservations, and the Cendent reference is thrown in without explanation as to what independent, objective teaching would lead one of ordinary skill in the art to combine it with Brandt. Furthermore, giving the Cendent reference its due, it merely teaches the use of “hyperlinks” that are not much different than the method taught by Brandt of just typing in the URL for another service provider, and neither of which meet the claimed invention requiring two softwares communicating with each other and one of them providing management control over the process. This rejection should be withdrawn.

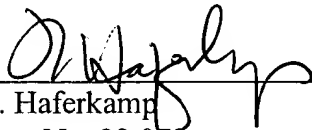
Lastly, reconsideration is respectfully requested of the rejection of claims 65-68 as being obvious over Brandt in view of the Cendent reference. Claim 65 recites a vehicle reservation system accessible through a web site with a management software for receiving reservations, with the system having a link to a plurality of service providers with at least one of them having an integrated business software of processing and filling the reservations. As explained above, Brandt does not have any management software; it only has a FlowMark software which is akin to a legacy software or the separately recited integrated business software for filling the reservations. Adding in the “hyperlinks” taught in the Cendent reference does not fill in this shortcoming of teaching. Furthermore, the Office is using applicant’s disclosure as a template to search through the prior art to find a reference that teaches something close to what is claimed and then patches these two references together with the justifying comment that to do so would make the process “more efficient and less time consuming for the customer”. That may well be the case, but the law requires that the Office identify some objective teaching in the prior art that provides the motivation for combining the references. Just to say that it would work better is not enough under the law. The Office should withdraw this rejection as not being supported in the law, and as being overcome by the evidence put in the record by the two Declarations, among other things.

It is noted that new claims are being added herein. The first group of claims represents claims adopting suggestions made by the Office during the last telephonic interview in December. The last several independent claims are submitted to eliminate the limitation that

multiple service providers are required to be connected to the system, as such limitation is deemed to not be needed to overcome the prior art of record for the reasons as explained at length herein including that management capability is recited, or two software programs and associated computer systems are provided, or for other reasons as noted above.

Reconsideration is respectfully requested in view of this additional evidence submitted by way of Declaration, and the citation to the proper law on obviousness as well as the additional argument. Favorable reconsideration is requested as well as an opportunity to explain these matters in a personal interview. The Office is urged to contact applicant's undersigned representative to schedule the interview or for any other matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Haferkamp', is written over a horizontal line.

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**Claims As Amended:**

52. (new) The rental vehicle reservation system of claim 51 wherein said authorized purchaser comprises a business organization, said business organization having a plurality of authorized purchasers, said plurality of authorized purchasers being enabled to access said Internet web site from any location offering Internet web access, and wherein said at least one rental vehicle service provider further comprises a second business organization, said second business organization comprising a plurality of diverse rental vehicle locations.

58. (new) A computer software program having means for providing an Internet site for access by a multi-level business organization to a plurality of service providers including one such service provider having its own computer system programmed with integrated business software, said computer software program having means for managing service reservations placed to said service provider's integrated business software and for fulfillment thereby, said computer software program having means for managing reservations placed therethrough including administrative control and accounting for said reservations.